UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:12-CR-376-F1

UNITED STATES OF AMERICA)	
)	
v.)	<u>ORDER</u>
)	
ALEJANDRO GARCIA-LAGUNAS,)	
also known as ALEX FUENTES,)	
Defendant.)	

This matter is before the court on the parties briefing regarding a potential *Collins* error that occurred during Fuentes's trial. Pursuant to this court's June 3, 2013 order [DE-84], the parties have submitted post-trial briefs on the issue of whether the jury charge was erroneous under the Fourth Circuit's decision in *United States v. Collins*, 415 F.3d 304 (4th Cir. 2005). As the Government notes in its brief, ruling on this issue is somewhat premature because no presentence report has been prepared. The pre-sentence report may find that the Fuentes's guidelines range is at or under the twenty-year maximum sentence provided for in 21 U.S.C. § 841(b)(1)(C). If the pre-sentence report finds his guideline range is at or below twenty years, and the Government does not seek an upward departure, the issue will be moot and the court can simply proceed to sentence Fuentes. In the event the guidelines range is higher than the statutory maximum provided in § 841(b)(1)(C), the court will likely continue Fuentes's sentencing to provide sufficient time to fully consider the parties' briefing and issue a written order. Thus, the

The court notes that the June 3, 2013 order erroneously stated that if the jury had found Fuentes individually responsible for distributing 500 grams or more of cocaine, his maximum sentence would be life imprisonment. As the Government points out, defendants found guilty of conspiracy to distribute 500 grams or more of cocaine are subject to imprisonment for not less than five nor more than forty years imprisonment. 21 U.S.C. § 841(b)(1)(B).

court will delay ruling on the *Collins* issue until it has had an opportunity to review Fuentes's pre-sentence report. The court HOLDS IN ABEYANCE the parties' briefing [DE-91, -92, -94] in response to the court's June 3, 2013 order until the pre-sentence report is completed.

SO ORDERED.

This the <u>//</u> day of August, 2013.

JAMES C. FOX

Senior United States District Judge